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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ISAAC GIL,

Defendant and Appellant.

2d Crim. No. B244591
(Super. Ct. No. 2010043790)
(Ventura County)

Isaac Gil appeals from the judgment following his conviction by jury of second degree murder (Pen. Code, §§ 187, subd. (a), 189)¹ and street terrorism (§ 186.22, subd. (a)). The jury found true the allegation that appellant personally used a deadly weapon in committing the murder (§ 12022, subd. (b)(1)) but found untrue the allegation that he murdered the victim for the benefit of a criminal street gang (§ 190.2, subd. (a)(22)). The trial court sentenced him to state prison for 16 years to life.

Appellant does not contend that he was not the killer. He contends, however, that the trial court erred in admitting a witness's recorded statement which, among other things, contained both admissible inconsistent statements and inadmissible hearsay. He also objects to other content in the statement pertaining to police conduct

¹ All statutory references are to the Penal Code unless otherwise stated.

and the witness's emotional reaction to the victim's death. Trial counsel conceded the stabbing but contended that the court's rulings compromised his ability to achieve a verdict of manslaughter rather than murder. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prosecution Evidence

Andrew Singler was stabbed around midnight, on June 14, 2008, at Joshua Morningstar's high school graduation party.² Joshua held the party in the large back yard of his family's Moorpark home. Appellant and Tyler Brown arrived in the early evening on June 13, hours before most guests. Joshua estimated there were about 100 guests at the party between 11:00 p.m. and midnight. Most of them gathered in a large detached garage and the adjacent outdoor areas. They consumed beer or other liquor, marijuana, Xanax and/or cocaine. The cocaine was in a trailer parked near the garage.

Several hours after the party began David Mateo, Bruno Ornelas and Raul Galvan arrived in a group with a few other people. Mateo displayed a gun during the party. Galvan testified that he saw appellant with a knife during the party. Brown testified he saw appellant carrying a silver-handled knife earlier that day.³

Megan Morningstar, Joshua's sister, and appellant were socializing near the trailer, when she heard Brandon Gaddie and Zack Pena arguing loudly about a girl. She told appellant to stay where he was, and went toward Pena and Gaddie. Joshua approached them and yelled that nobody was going to fight at his house. Galvan blindsided Joshua with a punch. Joshua fell, and Megan helped him stand up. Within minutes many guests were fighting, including Joshua, Megan, Alex Daro, Brown, Galvan, and Singler. Megan was standing near Singler when appellant approached and punched Singler twice in the stomach. Singler started walking up the driveway, and

² Joshua and Megan Morningstar both testified at trial. For the sake of clarity, we will refer to them by their first names.

³ Joshua, appellant, Brown, Mateo, Ornelas and Galvan associated with or belonged to the NSK (Non Stop Krew) gang which evolved from a tagging group. It was not unusual for NSK members to carry knives. Mateo and Brown testified as prosecution witnesses in exchange for favorable treatment on pending cases.

people yelled, "Let's get him," and "Yo, let's jump this guy." Five or six people knocked Singler to the ground, and hit, kicked, and jumped on him. It was too dark to see each of the assailants, but they included Brown, appellant, Mateo, Ornelas, and Galvan. The attack stopped when Pena approached and yelled, "What the hell are you guys doing?"

Singler stood and staggered toward the street, but collapsed against a vehicle in the driveway. He had been stabbed and was bleeding. Several people, including Megan, tried to care for Singler's stab wounds, to no avail. He died within minutes from a stab wound to the heart.

Before the sheriff deputies or paramedics arrived at Joshua's home, many guests, including appellant and Brown, fled toward the street. Brown asked appellant if "he stuck him." Appellant replied, "Yes." Around the same time, Mateo heard appellant repeating, "I stabbed him, I killed him." Brown and appellant left Joshua's neighborhood on foot. They hopped a fence, went through the bushes to a dirt trail, along a creek, and crossed the creek and a waterfall. Appellant asked Brown if there was anything on his sweater. At some point, appellant got rid of it. He told Brown he wiped the knife and threw it in a ditch. Appellant said he hoped the victim was not dead. He also said people would get whacked if they gave information to law enforcement. Law enforcement personnel and volunteers searched the areas around Joshua's home, and the areas Brown had crossed with appellant on June 14, 2008. They never found appellant's knife or sweater.

At about 2:00 or 3:00 a.m., appellant and Brown called Crystal Buck and asked her for a ride. Buck and Melanie Rose picked them up at a truck stop. Buck testified she did not see a knife or any blood on their clothing.

On June 24, 2008, appellant and Galvan were in the Ventura County jail. Galvan had agreed to wear "a wire" and talk with appellant about the killing. During a conversation, appellant told Galvan, "I hit him the first time, I didn't even – I didn't think I hit him, fool." "Boom, I hit him the second time in his heart and then I looked around and fucking I ran up to the front."

Defense Evidence

David Notowitz, a forensic video/audio expert, testified that he listened to the taped June 24, 2008, jailhouse conversation between appellant and Galvan. He did not hear appellant say he stabbed the victim in the heart.

Two defense expert witnesses testified about the impact of drugs and alcohol upon a person's ability to perceive his surroundings, function, and to make judgments. Each of them relied upon appellant's account of his drug and alcohol consumption. Appellant told Randy Wood, a licensed psychologist that he consumed alcohol, marijuana, cocaine, and Xanax at Joshua's party. Dr. Wood opined that during the party appellant would have been in a "dissociative state;" the drugs would have impaired his ability to perceive his surroundings and make good judgments; and the drugs and dark conditions would have disturbed his information processing. Dr. Wood conceded his opinion was "highly speculative" absent objective evidence such as a blood analysis to establish the amount of alcohol or drugs in appellant's system during or immediately after the party. Norm Fort, a forensic consultant with expertise concerning alcohol and drugs, testified about the impact of such substances upon a person's ability to perceive accurately and make sound judgments. Based on his self-described alcohol consumption, Fort hypothesized that appellant's blood alcohol level was at least .32 during the party. He opined appellant could only perform basic functions, such as walking and talking. Fort admitted that if appellant were able to flee the scene and dispose of a weapon, it would show some ability to reflect on the situation.

DISCUSSION

Appellant complains that the trial court erred in admitting a recording which contained, among other things, both admissible inconsistent statements and inadmissible hearsay. We disagree.

The challenged recording contains statements Megan made to Ventura County Sheriff Senior Deputies and Detectives Dave Brantley and Billy Hester on August 19, 2010. When Detective Brantley first interviewed her on June 14, 2008, Megan said she thought Galvan struck Singler. On July 31, 2008, she said she did not

know who stabbed Singler and she did not see appellant with a knife. On August 19, 2010, Megan said that appellant looked at her during the party, "then grabbed the knife from his pocket and stabbed Andrew [Singler]" twice.

At trial, Megan testified that appellant punched Singler twice in the stomach, but she did not see anyone, including appellant, with a knife. She denied having told the deputies that appellant stabbed Singler with a knife. The prosecution asked Megan about her recorded August 19, 2010, statement that appellant stabbed Singler. She testified that immediately before recording her August 19th interview, the deputies told her what to say and threatened to arrest her as an accessory to murder if she did not say what they wanted to hear. She further testified the deputies "never treated [her] like a witness," but treated her like she was involved in the crime, and "like a piece of shit stuck to a cop."

The prosecution sought to introduce Megan's August 19, 2010, recorded interview as a prior inconsistent statement, to impeach her trial testimony that she did not see appellant with a knife, and rebut her claim that detectives mistreated and coerced her to make that statement. The defense objected that the interview consisted largely of inadmissible hearsay. After acknowledging that fact, the court observed that Megan had "attacked the police investigation and asked the jurors to find that she was coerced, intimidated, and fed information. This evidence [the recorded interview] suggests that that's not true." Before the prosecution played the recording of the interview, the court instructed the jury as follows: "Ladies and gentlemen, the Court has determined that the entirety of the interview of witness Megan Morningstar conducted by sheriff's detectives on August 19, 2010, is admissible evidence. Parts of this interview will be admitted for all purposes, which means you may consider them for the truth of the statements made. [¶] In admitting this evidence for its truth, the Court is not determining that the statements are or are not true. Only that the jury may consider them for all purposes and if a juror finds the statement reliable, consider it for its truth. [¶] *Other parts of the interview are being admitted for the limited purpose of showing you, if they do, the manner in which the interview of this witness was conducted by the detectives. These*

portions are not to be considered for the truth of the statements made but only as evidence of the way the witness was dealt with by the interviewers. [¶] A transcript of this interview has been prepared. The parts which are admitted for all purposes are highlighted in yellow." (Italics added.)

Appellant contends that the court erred by admitting the entire recording of Megan's August 19, 2010, interview, which largely consisted of statements that should have been excluded as hearsay pursuant to Evidence Code section 1250, and excluded pursuant to Evidence Code section 352 because their prejudicial impact outweighed their probative value. We disagree.

We apply "the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence, including one that turns on the hearsay nature of the evidence in question [citations]." (*People v. Waidla* (2000) 22 Cal.4th 690, 725.) "[A] trial court's ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004.)

Hearsay is "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) Evidence of an out-of-court statement is admissible if it falls within an exception to the hearsay rule or where it is "offered for a nonhearsay purpose—that is, for something other than the truth of the matter asserted—and the nonhearsay purpose is relevant to an issue in dispute. [Citations.] For example, an out-of-court statement is admissible if offered solely to give context to other admissible hearsay statements." (*People v. Davis* (2005) 36 Cal.4th 510, 535-536.) Here, the hearsay in the recorded interview was admissible for the nonhearsay purpose of rebutting Megan's charge that immediately before recording the August 19th interview, deputies coerced her to state that she saw appellant stab Singler with a knife. (*People v. Mayfield* (1997) 14 Cal.4th 668, 749-750 [evidence admitted to rebut charge of excessive force by police].) It was also admissible to provide a context for Megan's prior inconsistent

statements in the interview, because the jury needed to assess their truth, and the truth of Megan's trial testimony. (*Davis*, at pp. 535-536.)

There is no merit to appellant's related claim that the court abused its discretion in admitting the challenged evidence rather than excluding it pursuant to Evidence Code section 352 because its prejudicial impact outweighed its probative value. "Prejudice for purposes of Evidence Code section 352 means evidence that tends to evoke an emotional bias against the defendant with very little effect on issues, not evidence that is probative of a defendant's guilt." (*People v. Crew* (2003) 31 Cal.4th 822, 842.) The challenged portions of the interview were not unduly prejudicial. For example, appellant cites hearsay statements regarding Megan's employment, her expenses, and other responsibilities. Such evidence would not evoke an emotional bias against appellant.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

James P. Cloninger, Judge
Superior Court County of Ventura

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Defendant and Appellant.

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